Bench Decision from Excerpt of March 26, 2015 Hearing Transcript

In Re:

LIGHTSQUARED INC., et al.

Case No. 12-12080-scc

March 26, 2015

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very much.

THE COURT: Okay. This is what we are going to do. I am sending you out to lunch for an hour, and then we are going to come back and I am going to give you a decision, all right? We will see you at 3. You may leave your materials here.

MR. LEBLANC: Thank you, Your Honor.

THE COURT: Thank you.

(Recess from 1:59 p.m. until 3:05 p.m.)

THE COURT: Please have a seat.

All right. I'm going to read you a bench decision. It's going to take a while.

Let me preface this by saying that because we have been at this for so long and because this is such a costly process, I determined that I wasn't going to let perfect be the enemy of done. So this is not a publishable, perfect decision, but hopefully it does the job.

A little over one year ago, LightSquared presented its third amended joint plan for confirmation. Notwithstanding its widespread support by significant stakeholders, the plan suffered from myriad defects and was denied confirmation. That was then, this is now. And between then and now, much has transpired. More than a dozen plans have been announced or proposed. New investors have come and gone. Countless hours of human capital have been expended seeking a solution to the vexing issues that have kept LightSquared's Chapter 11 cases

before this Court for almost three years. Surprisingly, the future was foretold by LightSquared's largest stakeholder who, remarkably, continued to oppose plan confirmation until just a few days ago. Testifying for the Court during the SPSO equitable subordination hearing in January 2014, Mr. Charles Ergen, SPSO's principal, observe that, "God wasn't making more spectrum. There's a law of physics, there is only so much spectrum in the universe. And the usage of that spectrum was doubling every year." As he has trumpeted repeatedly to investors and analysts avidly following DISH's evolution from a family-owned company with a truck and some satellite dishes to a dominant force in the wireless spectrum marketplace, everyone and everything, from your children to your pets to your smart car and even your refrigerator, will continue to demand more and more spectrum. Mr. Ergen is right. And the recently concluded FCC auction for 65 megahertz of spectrum has erased any doubt that LightSquared's spectrum holdings are valuable indeed. Just how value was one of the critical questions presented by the plan of reorganization that is before the Court.

No description of the background of these Chapter 11 cases would be complete without mention of the one thing that has remained constant throughout this bankruptcy battle biblical proportions. Proposed transactions, possible plans, and protracted litigation may also have come and gone but

SPSO's refrain remained the same, month after month: "Just pay us in full cash and we will happily leave LightSquared's capital structure." And then just last week, at 6 p.m., at the end of the sixth long day of the confirmation hearing, LightSquared's Special Committee announced that the seemingly impossible had been achieved: a 1.5 billion dollar commitment letter had been signed that would enable the Debtors to pay SPSO, in full, in cash, on the effective date of the Debtors' Modified Second Amended Joint Plan Pursuant to Chapter 11 of the Bankruptcy Code (hereinafter, the "Plan").

SPSO has now accepted the "swift and complete exit" requested in its objection to confirmation and has in fact withdrawn such objection. The objections to confirmation lodged by various holders of Preferred Interests, including the Providence, Solus, and Centaurus parties, have also been withdrawn or otherwise resolved. Only one objection to confirmation of the Plan remains outstanding. Mr. Sanjiv Ahuja, a holder of approximately 7.5 percent of the existing Common Equity Interests of LightSquared Inc., asserts that the Plan is based on a "brazen undervaluation" and that such equity interests should receive a distribution. In perhaps the most ironic -- and baseless -- observation of all, Mr. Ahuja asserts in his recently filed memorandum in opposition to confirmation, that with respect to confirmation, "There are no disputed issues of fact." If only it were so.

The Court finds that the Debtors have carried their burden of proof with respect to the structure and valuation premise of the Plan and have otherwise demonstrated that the Plan complies with all applicable provisions of the Bankruptcy Code. For the reasons set forth below, the remaining objection to confirmation is overruled. The Plan is confirmed.

Background.

While the Court assumes familiarity with the extensive prior record of these proceedings and with this Court's prior decision denying confirmation of the Debtors' Third Amended Joint Plan, 513 B.R. 56 (Bankr. S.D.N.Y. 2014), the Court will provide limited factual background for the purposes of this Bench Decision.

Regulatory background.

On September 28, 2012, LightSquared filed with the FCC a series of applications seeking to modify various of its licenses (collectively, the "License Modification Application") to, among other things:

Authorize LightSquared to use the 1675-1680 megahertz spectrum band (the "NOAA Spectrum") on a shared basis with certain government users including NOAA.

Permit LightSquared to conduct terrestrial operations "pairing" its 1670-1680 megahertz of New Downlink (consisting of the NOAA Spectrum and the 1607-1675 megahertz spectrum leased from CrownCastle) with two 10 megahertz L-band uplink

channels in which LightSquared currently is authorized to operate, 10 megahertz 1627.5 to 1637.5 megahertz ("Uplink 1") and 10 megahertz uplink at 1646.7 to 1656.7 megahertz or Uplink 2; and

Permanently relinquish LightSquared's right to use its upper 10 megahertz of L-band downlink spectrum (a 10 megahertz band at 1545.2 to 1555.2 megahertz) for terrestrial purposes (i.e., that portion of the spectrum closest to the band designated for GPS devices).

In conjunction with submitting the License Modification Application, LightSquared also asked that the FCC open a proceeding via a petition for rulemaking, filed on November 2, 2012, to make an administrative change amending the U.S. Table of Frequency Allocations to add a primary allocation permitting nonfederal terrestrial mobile use of the NOAA Spectrum. Thus, LightSquared has been pursuing a solution through the License Modification Application that would provide it with 30 megahertz of spectrum, an amount LightSquared states, that is sufficient to implement its business plan. LightSquared has also requested that the FCC open an additional proceeding via a petition for rulemaking to examine the conditions and operational parameters under which its 10 megahertz downlink at 1526 to 1536 megahertz (the "Lower Downlink") could be used sometime in the future for terrestrial service.

As of the date of this Bench Decision, the License Modification Application remains pending. The Plan is not conditioned on the grant of the License Modification Application.

The Plan.

On January 20, 2015, LightSquared filed solicitation versions of the Plan and its accompanying specific disclosure statement, which disclosure statement was approved by order dated January 20, 2015. The Plan has been proposed by a group of Plan Proponents comprised of (a) Fortress Credit Opportunities Advisors LLC, by and on behalf of certain of its and its affiliates' managed funds and/or accounts ("Fortress"), (b) Centerbridge Partners, L.P., on behalf of certain of its affiliated funds ("Centerbridge"), (c) Harbinger Capital Partners LLC, on behalf of itself and each of its and its affiliates' managed funds and/or accounts that hold Claims and/or Equity Interests ("Harbinger"), and (d) LightSquared. In addition to the Plan proponents, the Plan is supported by SIG Holdings, Inc. and/or one of its designated affiliates ("SIG" and, collectively with Fortress, Centerbridge, and Harbinger, the "New Investors"), MAST Capital Management, LLC and its managed funds and accounts that are Inc. DIP Lenders and Holders of Prepetition Inc. Non-subordinated Claims (collectively "MAST"), and the Prepetition Inc. Agent.

The Plan contemplates, among other things, all as

reflected in the revised versions of the Plan and related documents that have been filed on the docket of these cases, (A) new money investments by the New Investors in exchange for a combination of preferred and common equity, (B) the conversion of the Prepetition LP Facility Claims into new second lien debt obligations, (C) SIG's purchase of the Prepetition Inc. Facility Non-Supported Claims for the Acquired Inc. Facility Claims purchase price and the conversion of the Acquired Inc. Facility Claims into the reorganized LightSquared Inc. Facility, (D) the payment in full, in cash, of LightSquared's general unsecured claims, (E) the provision of approximately 210 million dollars of the New Inc. -- of New Inc. DIP Claims by the New Investors (including by SIG converting forty-one million dollars of DIP Inc. Claims into New Inc. DIP Claims, (F) the provision of 1.25 billion dollars in new-money working capital for the Reorganized Debtors, (G) the assumption of certain liabilities, (H) the resolution of all inter-Estate disputes, and (I) as part of the negotiated settlement reached between Harbinger and the other Plan Proponents, the contribution by Harbinger and its Claims and Causes of Action against the FCC and GPS Industry, the appeal of the Bankruptcy Court's rulings in connection with the Ergen Adversary Proceeding, the RICO action commenced against Ergen and certain of its affiliates, and any other claims or causes of action in connection with the Debtors, their business, or

any interest in the Debtors (collectively, the "Harbinger Litigations").

The confirmation hearing on the Plan took place over eight days, beginning on March 9, 2015, with closing arguments held today, March 26, 2015. On March 17, 2015, prior to the final day of testimony at the Confirmation Hearing and in accordance with prior announcements on the record of the hearing, made by counsel to the special committee of the boards of directors for LightSquared Inc. and LightSquared LP (the "Special Committee"), the Debtors, on behalf of the Plan Proponents, filed modified versions of the Plan and the Second Lien Exit Credit Agreement (Docket No. 2238). On March 26, 2015, prior to today's closing arguments, the Debtors, on behalf of the Plan Proponents, filed a further modified version of the Plan at Docket 2265 as well as the joinders to the Plan Support Agreement executed by Cerberus Capital Management, L.P. and Solus on March 26, 2015 (Docket No. 2268). At today's hearing, counsel for LightSquared described for the Court the detailed terms of the modified Plan, the revised confirmation order, and the settlements with various parties embodied in the relevant Plan documents.

In addition to confirmation of the Plan, several other motions were heard at the Confirmation Hearing and will be discussed herein.

The Objections to Confirmation

Objections to confirmation of the Plan were filed by numerous parties, including: (i) SP Special Opportunities, LLC ("SPSO"), (ii) Providence TMT Special Situations Fund LP and Providence TMT Debt Opportunity Fund II LP (collectively, "Providence"), (iii) Centaurus Capital, L.P., Keith Holst, and Stephen Douglas (collectively, the "Centaurus Parties"), (iv) Mr. Sanjiv Ahuja, and (v) Solus Alternative Asset Management LP or Solus. All such objections and/or reservation rights have now been resolved or withdrawn with the exception of Mr. Ahuja's objection. In accordance with the procedure established on the record of the March 18th hearing for the filing of additional objections to the modified version of the Plan, on March 25, 2015, Mr. Ahuja filed a post-trial brief in opposition to confirmation of the Plan, together with a supporting declaration of Mr. Avery Samet. Mr. Ahuja's counsel argued in support of his objection at closing arguments held today, March 26, 2015.

In connection with the withdrawal of their objection to confirmation of the Plan and the negotiated arrangements and satisfactory treatment of these parties set forth in the Plan as modified, Providence and the Centaurus Parties each filed motions for orders pursuant to Raoul 3018(a) of the Federal Rules of Bankruptcy Procedure (See Docket Nos. 2242 and 2244), formally withdrawing their objections to the Plan and seeking to change their votes to accept the Plan. The 3018 motions are

granted. On March 24, 2015, SPSO filed a notice of withdrawal of its objection to the Plan withdrawing its objection and reserving its right to object to the proposed confirmation order, which objection was placed on the record during closing argument. Counsel for DISH also appeared and voiced an objection to certain language in the proposed confirmation order. On March 26, 2015, Solus filed a notice of withdrawal which, among other things, withdrew its objections to the Plan, the Inc. DIP Motion, and the Alternative Transaction Fee.

Evidentiary matters

The Court now turns to a number of evidentiary matters raised by the parties prior to and during the trial.

I. Motions with respect to Expert Witness Mr. Jim Millstein.

A. Motion in Limine to Exclude the Peters Submission and Reliance Thereon.

By way of background, it is important to note that in preparation for the Confirmation Hearing, the parties agree to certain discovery-related deadlines, including a deadline of February 25, 2015 at 11:59 p.m., for SPSO to designate potential experts (if any) and to submit the report of such expert or experts. In compliance with this deadline, SPSO designated Mr. Jim Millstein as its valuation expert. In connection with its objection to confirmation of the Plan, which objection was also filed on February 25, 2015 at or about

11:59 p.m., SPSO filed the Declaration of James C. Dugan, which annexes Mr. Millstein's expert report as Exhibit F. The Millstein report is thirty-nine pages long and contains a number of appendices; Appendix G is an eighty-four-page report entitled "Value of L-band Spectrum: Significant Differences and Similarities Between L-band Spectrum and Key Commercial Mobile Wireless Bands," which was prepared at Mr. Millstein's request by non-witness Tom Peters, a former Chief Engineer of the Wireless Telecommunications Bureau of the Federal Communications Commission. The Millstein report cites to and relies upon the Peters Submission for technical information regarding wireless spectrum, the comparability of various blocks of spectrum, and other matters relating to wireless networks, which information was utilized by Mr. Millstein preparing his evaluation -- his valuation analysis. Mr. Peters was not identified as an expert witness by SPSO by the February 25, 2015 deadline.

On February 28, 2015, the Debtors filed a Motion in Limine for an order pursuing to Rules 702, 703, and 802 of the Federal Rules of Evidence (i) excluding from the evidentiary record for the Confirmation Hearing (a) the Peters Submission, which is appended as Exhibit G to the Millstein Report and (b) those portions of the Millstein Report that recite, refer, or rely upon the Peters Submission; (ii) barring any testimony by Mr. Millstein at the Confirmation Hearing that

is based in any way on the Peters Submission; and (iii) striking from the declaration of James C. Dugan filed in support of the objection to the Plan filed by SPSO the Peters Submission and all portions of the Millstein Report that recite, refer to, or rely upon the Peters Submission. In support of the Motion in Limine, the Debtors filed the Declaration of Aaron L. Renenger, dated February 27, 2015. On March 1, 2015, SPSO filed an objection to the Motion in Limine. On March 4, 2015, the Debtors filed a further reply to the Motion in Limine, together with (i) the Declaration of Maqbool Aliani and (ii) the Supplemental Declaration of Aaron L. Renenger; and the Ad Hoc Secured Group of LightSquared LP Lenders filed their response in support of the Motion in Limine. The Motion in Limine was accompanied by a Motion to Shorten Time requesting a hearing on the Motion in Limine as soon as practicable. The Debtors also sent the Court a letter requesting a discovery conference with respect to the Motion in Limine, which conference was held on Monday, March 2, 2015.

On March 4, 2015, SPSO filed on at docket of the case an e-mail sent at 3:47 p.m. On March 3rd to the Court's Chambers, the Debtors, and certain parties in interest which, contrary to SPSO's prior representations that Mr. Peters would not be offered as a witness, informed the Court and the parties for the first time of SPSO's intention to present Mr. Peters for live testimony at the Confirmation Hearing, stating that

SPSO believes "this is the most expeditious, and least distracting, method to get the evidence to Your Honor on the core issue at next week's hearing -- the value of LightSquared's spectrum." Also on March 4, 2015, the Debtors filed a reply to the motion together with the Declaration of Maqbool Aliani and the Supplemental Declaration of Aaron Renenger, and the Ad Hoc Secured Group filed their response in support of the motion. At a hearing on March 4, 2015, prior to the ruling on the Motion in Limine, the Court heard from the parties regarding the Motion in Limine and regarding SPSO's e-mail that it had now determined to offer Mr. Peters as a live witness. LightSquared argued vehemently that SPSO should not be permitted to belatedly identify Mr. Peters as a testifying expert, as it would be prejudicial to the Debtors as they prepare for the upcoming Confirmation Hearing. LightSquared emphasized that the deadline for expert designations had passed a week earlier, that the Confirmation Hearing was less than a week away, and that the remaining days before the Confirmation Hearing were "booked solid" with the depositions of Mr. Millstein, Mr. Hootnick, and Mr. Merson. SPSO's attempt to "simply arrogate to itself an exception from the Court's deadline" in order to call Mr. Peters at this late stage should not be countenanced, argued LightSquared. See its reply at page 4.

The Motion in Limine was granted on the record on

March 4, 2015 and by order dated March 5, 2015. At that time, the Court indicated that a more detailed ruling on the Motion in Limine would be incorporated in the Court's confirmation decision. In light of the withdrawal of SPSO's objection to the confirmation, it is unnecessary to burden the record even more with the Court's more detailed rulings on the Motion in Limine.

B. The Motion in Limine to Preclude the Testimony of Expert Witness Mr. Jim Millstein.

At commencement of the Confirmation Hearing, the Debtors announced on the record their intention to file a motion to preclude any testimony by Mr. Millstein regarding technical spectrum-related issues, including any valuation evidence based on the comparability of spectrum bands, during the Confirmation Hearing. The Debtors submitted the motion and the supported declaration of Aaron L. Renenger on March 10, 2015, prior to Mr. Millstein's live testimony, but stated in the motion and on the record of the Confirmation Hearing that they did not oppose the Court's reserving decision on the motion until after the Court heard Mr. Millstein's testimony in full. SPSO filed an objection to the motion.

Mr. Millstein began his testimony on March 17, 2015; the Debtors conducted an extensive voir dire after Mr. Millstein's qualifications were introduced and renewed their request to preclude Mr. Millstein from offering an expert

opinion on valuation of Debtors' spectrum assets. On the record of the hearing held on March 17, 2015, the Court denied the Debtors' motion to preclude Mr. Millstein's testimony on any technical, spectrum-related issues stating that, in light of Mr. Millstein's extensive experience and qualifications in the field of corporate restructuring and investment banking, which includes years of experience in matters involving complex asset valuations, the Court would permit Mr. Millstein to offer his expert opinion, subject to cross-examination, and would afford appropriate weight to his testimony in rendering a decision on confirmation of the Plan. See transcript 3/17/15 at 123 to 126. Mr. Millstein's testimony thereafter resumed and concluded on March 18th.

C. The Millstein "Fee Issue"

During the voir dire of Mr. Millstein, the Debtors for the first time raised an issue with respect to Mr. Millstein's fee structure, specifically arguing that Mr. Millstein's fee arrangement with SPSO, which was amended after the conclusion of mediation to provide for an additional three million dollar "consummation fee" payable under certain circumstances, constitutes a violates of New York law that prohibits a lawyer from offering compensation to a witness contingent upon the outcome of a matter, which the Debtors argue is exactly what occurred by the addition of the three million dollar additional fee at the point in time when SPSO determined to move forward

with its objection to the Plan. The Debtors cited various cases from this District in support of their argument; counsel for Mr. Ahuja indicated on the record and in his post-trial brief that he joined in the Debtors' objection. See 3/17 transcript at 56 to 57; Ahuja Post-trial Objection, page 6, note 9. SPSO vigorously disputes the Debtors' characterization of the Millstein fee arrangement and had intended to file an additional brief addressing the issues. In light of subsequent developments, however, the Court finds that the Millstein fee issue is moot. Accordingly, this decision will not address the issues raised by the Debtors or Mr. Ahuja with respect to Mr. Millstein's fee arrangement.

Other evidentiary matters

The Motion of SPSO to Exclude the Opinions of Mr. Hootnick, Mr. Orszag, and Mr. Andrew Merson.

On February 27, 2015, SPSO filed a motion to exclude the opinions of each of the Debtors' expert witnesses: Mark Hootnick, Jonathan Orszag, and Mr. Millstein, and also filed in support thereof the Declaration of Mr. Tariq Mundiya. The Debtors objected to the motion on March 7, joined by the Ad Hoc Secured Group, and SPSO replied on March 11, 2015. Mr. Hootnick testified on March 10th and March 11th, and Mr. Merson and Mr. Orszag testified on March 12th. On the record of the hearings of March 12th and 16th, the Court denied the motion to exclude the opinions of Mr. Merson and Mr. Hootnick. With

respect to Mr. Orszag, for the reasons stated on the record on March 16th, 2015, the Court denied the motion to exclude with respect to his first opinion but granted the motion to exclude Mr. Orszag's second opinion, which dealt with a so-called probabilistic analysis.

Next, the Motion for Leave to Supplement the Objection of SPSO to the Plan

At the close of business on the final business day before the commencement of the Confirmation Hearing, March 6, 2015, SPSO filed the motion for leave to supplement its objection to the Plan. By the motion, SPSO asserted that, because depositions continued beyond the deadline for parties to file objections to confirmation of the Plan, it did not have the ability to include all available sworn testimony in its objection. Specifically, by the motion, SPSO sought to include the following in its previously-filed objection: (i) a supplement which raised arguments originating from the deposition testimony of Mr. Vivek Melwani of Centerbridge and from a declaration signed by Mr. David Daigle, a partner of Capital Research and Management Company, and (ii) a supplemental declaration of Rachel C. Strickland which annexed (a) excerpts from the deposition of Mr. Vivek Melwani taken on February 26, 2015 and (b) the declaration of Mr. David Daigle, dated February 26, 2015. At the commencement of the Confirmation Hearing, the Court granted the motion to

supplement with respect to the deposition testimony of Mr. Melwani and denied the motion with respect to the declaration of Mr. Daigle. The Court instructed SPSO to refile the motion to supplement and its exhibits (the supplement itself and the related declaration) to include only the portion of its supplement related to Mr. Melwani, which SPSO did the following day. (See Docket No. 2215). On March 18, 2015, SPSO and the Debtors jointly submitted a transcript of Mr. Melwani's deposition reflecting the designations and counter-designations of the parties.

Next, the Motion to Preclude the Debtors from Relying on Mediation Discussions

On the eve of the Confirmation Hearing, SPSO also filed a Motion and Memorandum of Law to (i) preclude the Debtors from relying upon any information or discussions relating to the mediation and (ii) strike any portions of the Debtors' confirmation brief that's based in any way on the mediation. The Court addressed this motion at the commencement of the Confirmation Hearing. At that time, counsel to SPSO explained that the motion was filed "as a precautionary matter" with respect to testimony that was anticipated to be presented at the hearing, particularly since SPSO believed that portions of the Debtors' confirmation brief went beyond a mere recitation of facts and revealed the substance of mediation discussions. SPSO's counsel stated that it merely sought to

put the mediation privilege on the Court's radar screen prior to the hearing. The Debtors stated their objection to the motion to the extent it sought to strike statements in their brief that they believed were not problematic with respect to the mediation privilege. On the record of the hearing, the Court acknowledged that it was cognizant of these issues and would respect and enforce the mediation privilege. No further disposition of this motion is required.

The Confirmation Hearing

Over the course of seven days, the Debtors offered the testimony of numerous witnesses. Testimony was particularly focused on the issue of the value of LightSquared's spectrum and Moelis & Company's use of two different valuation approaches: (i) the Current Spectrum Approach, which applies comparable transaction values (from the years 2009 to 2012) to LightSquared's L-band spectrum (and applies values from the recently concluded Auction 97 to the already-in-use CrownCastle spectrum and (ii) the Alternative Spectrum Use Approach, which contemplates a potential deployment arrangement of (a) LightSquared's 10 megahertz of unpaired Uplink 2 and (b) a 5-by-5 pairing of the upper 5 megahertz of Uplink 1 and the 5 megahertz of CrownCastle downlink spectrum, and which ascribes no value to LightSquared's other spectrum. While the Alternative Spectrum Use Approach involves only a subset of LightSquared's spectrum and assumes regulatory approval for the

terrestrial use of such spectrum, as discussed herein, LightSquared argued that this approach was best able to capture the significant value inherent in LightSquared's spectrum assets, as evidenced by the dramatic increase in spectrum value observed in Auction 97, which auction results were used as comparables in the Alternative Use Spectrum Use Approach.

The confirmation testimony

Mr. Douglas Smith, the CEO, President, and Chairman of LightSquared, gave extensive testimony in support of confirmation of the Plan. Mr. Smith testified about a variety of topics, including, most significantly, his participation in the mediation process; the prognosis that led to the formulation and prosecution of the Plan; and the basis for the valuation premise of the Plan. He explained that he was very involved in the mediation process, either through in-person meetings or immediate reports from advisors as to the substance of advisor-only meetings. Mr. Smith testified as to his recollection of developments occurring between August and October of 2014, including the discussion and proposal of various plan frameworks. Mr. Smith testified that the first plan that the parties agreed had garnered enough consensus to be announced to the Court as a "framework" was reached on October 31, 2014 (the "October 31st plan"). Mr. Smith testified that the October 31st Plan ultimately failed because of too many open issues relating to the Plan, although

LightSquared had been prepared to move forward with the October 31st plan.

Mr. Smith explained that the Plan being presented for confirmation is supported by the New Investors and was greatly influenced by the results of Auction 97, the recently concluded auction spectrum conducted by the FCC. Mr. Smith indicated that he believed all parties had worked in good faith to come to a consensual plan but ultimately could not reach a fully consensual plan. Mr. Smith further testified that he believes the Plan provided LightSquared a viable path to reorganization because the Plan provides substantial liquidity, allows LightSquared to satisfy creditors' claims and interests, and enables LightSquared to emerge from bankruptcy. Mr. Smith said that his understanding -- that it is his understanding that LightSquared will have enough cash "runway" to reach the first half of 2018.

With respect to valuation, Mr. Smith explained that he had requested that Moelis prepare a valuation analysis based on the Alternative Spectrum Use Approach. He believed that the Current Spectrum Approach undervalued LightSquared's assets because the comparable transactions or "comps" used in the Current Spectrum Approach not only involved higher frequency spectrum than the spectrum owned or controlled by LightSquared but, more significantly, were "dated" inasmuch as, in his view, things had substantially changed in the wireless spectrum

industry and marketplace and the compatibilities no longer fully reflected the values of spectrum today. Mr. Smith testified that he was concerned that the Current Spectrum Approach did not and could not take Auction 97 into account.

Mr. Smith testified that the decision to assign no value to 25 megahertz of the L-band spectrum (that is, the two megahertz blocks of downlink and the lower 5 megahertz of Uplink 1) in the Alternative Spectrum Use Approach was done to be conservative. Mr. Smith testified that, in his view, the Alternative Spectrum Use Approach does not fully capture the value of LightSquared in that it is based on a 5-by-5 megahertz band of paired spectrum and 10 megahertz of unpaired uplink. The Alternative Spectrum Use Approach reflects an option that involves less regulatory risk and therefore Mr. Smith expressed a high level of confidence that it could be cleared for use in a relatively short time frame. The spectrum not included in the Alternative Spectrum Use Approach could still be used or monetized in various ways (for example, at lower power or to cover smaller geographic areas) but there was no explicit value or time frame placed on this option. Among other things, Mr. Smith emphasized that the Alternative Spectrum Use Approach would not be pursued in lieu of the continuing pursuit of the pending License Modification Application and that there is no certainty as to when the License Modification Application process would be completed.

With respect to the results of Auction 97, Mr. Smith testified that he believes that Auction 97 is highly relevant to the value of LightSquared's spectrum. First and foremost, it shows that the market is willing to pay more for spectrum generally. Moreover, the AWS-3 spectrum sold in Auction 97 is mid-band spectrum, but LightSquared's spectrum is lower-band spectrum and is thus more desirable for that and several other reasons.

Mr. Smith's testimony was compelling. Simply put, he displayed consummate mastery of every aspect of the Plan and of LightSquared's business and regulatory challenges. He displayed thorough familiarity with the technical aspects of LightSquared's spectrum and myriad aspects of wireless networks generally. Although he was cross-examined extensively by counsel for SPSO, Providence, and Centaurus, Mr. Smith gave no ground. The Court affords his testimony great weight.

Mr. Mark Hootnick

Mr. Hootnick, a Managing Director of Moelis & Company, was also called as a witness in support of confirmation. Demonstrating a remarkable amount of knowledge about LightSquared's history, business, and spectrum assets, Mr. Hootnick offered extensive testimony on plan valuation issues that was complete, coherent, and compelling. Mr. Hootnick speaks the language of spectrum fluently, notwithstanding the fact that he is an investment banker with no formal technical

training.

With respect to the specifics of the valuation work performed by him and his team at Moelis, Mr. Hootnick submitted an expert report which was admitted into evidence and he testified on a variety of subjects. Notable aspects of his testimony include the following points:

1. The CAGR, or compound annual growth rate, of the value of paired spectrum between 2006 and 2015 is twenty-five percent, based on a comparison between FCC Auction 66 and FCC Auction 97. Mr. Hootnick believes this growth rate may be even higher in recent years due to the greater demand in the marketplace for data. In this action to Auction 97, Mr. Hootnick used as a benchmark the spectrum-driven appreciation of the stock price of DISH to support his conclusion that the value of spectrum has increased dramatically.

2. The Current Spectrum Approach undervalues LightSquared's spectrum assess.

3. The Alternative Spectrum Use Approach uses Auction 97 gross bid data as of January 23, 2014 and applies it to a 5 megahertz by 5 megahertz paired block of spectrum and a 10 megahertz block unpaired uplink. Using various ranges of dollars per megahertz POP, Moelis placed a net enterprise value of approximately 9.6 billion dollars at the midpoint on this spectrum configuration.

4. The NOLs in the hands of LightSquared have no

value.

Mr. Hootnick's election to use as a comp the B1 block (as opposed to the A1 block) from Auction 97 was not significantly undermined by any testimony offered in opposition by SPSO's expert, Mr. Millstein. Moreover, Mr. Hootnick's valuation took into account certain so-called incumbency issues of three to ten years that exist with respect to the spectrum sold in Auction 97. Mr. Hootnick acknowledged that, if the pending License Modification Application were ultimately approved by the FCC, ultimately would be -- LightSquared may be worth dramatically more. Significantly, Mr. Hootnick offered no opinion as to the timing of any FCC action from either the LightSquared License Modification Application or the date on which the configuration contemplated by the Alternative Spectrum Use Approach could be implemented.

Mr. Hootnick's valuation testimony was lent additional support by the testimony of Mr. Andrew Merson (who, as one tweet apparently accurately stated, "knows a lot about spectrum") and a portion of his testimony -- a portion of the testimony of Mr. Jonathan Orszag. Mr. Hootnick's valuation analysis was extensively criticized by SPSO's expert, Mr. Jim Millstein. The Court affords little weight to Mr. Millstein's valuation of LightSquared's spectrum assets. In light of the resolution of SPSO's objection to confirmation, it is unnecessary to provide a detailed critique of the Millstein

Expert Report and Testimony.

Mr. Hootnick also gave extensive testimony supporting the Debtors' proffered liquidation analysis and the Debtors' request for approval of the proposed DIP financing and exit financing. He testified to the conservative nature of the proposed reorganized company's cash projections, noting that they reflect no potential savings that may result from, among other things, renegotiating the Inmarsat Cooperation Agreement. Finally, with respect to the value of the Inc. NOLs, Mr. Hootnick explained that Inc. has no cash flow and no ability to use the NOLs, lending support to the treatment of the NOLs pursuant to the Plan.

The Debtors also presented the testimony of Mr. Alan Carr, who has served as a member of the Special Committee since September 2013. Mr. Carr detailed his participation in the plan process and described as well his involvement in the months of mediation under the supervision of Judge Robert Drain. Confirming that the goal of the Special Committee at all times was to maximize value, seek broad consensus, and treat creditors fairly, Mr. Carr explained that he was personally and actively involved in all aspects of the plan process over the past year. He emphatically stated that the Special Committee had never excluded anyone from plan negotiations. Among other things, Mr. Carr explained the importance of and value to the estates in removing the

uncertainty and risk related to the Harbinger Litigations and, although the Special Committee did not prepare a formal valuation of the Harbinger Litigations, it did conclude that the value placed on it in the Plan was fair. Mr. Carr's testimony provided credible support and good faith of the Plan Proponents, the reasonableness of the alternative transaction fee, and also provided support for the Modified KEIP.

The Objection of Mr. Sanjiv Ahuja

Pursuant to an employment agreement, dated as of October 2009 (as amended, the "Employment agreement"), by and among Sanjiv Ahuja, Harbinger, and LightSquared LP, Mr. Ahuja served as Chairman of the Board of Directors and Chief Executive Officer of LightSquared. By letter dated February 23, 2012, consistent with the terms of the Employment Agreement, Mr. Ahuja resigned his position as Chief Executive Officer of LightSquared, effective February 10, 2012. By letter dated May 9, 2012 (the "Bonus Letter" and, together with the Employment Agreement, the "Employment Documents") the Debtors memorialized the terms of Mr. Ahuja's 2011 bonus.

On July 6, 2012, subsequent to the petition date, Mr. Ahuja, Harbinger, and the Debtors entered into a settlement agreement (the "Settlement Agreement") to terminate Mr. Ahuja's employment with the Debtors and to resolve and settle any claims Mr. Ahuja may have had arising from the Employment Documents and/or arising from his employment with the Debtors

(collectively, the "Executive Claims"). Specifically, the Settlement Agreement provided that (i) Mr. Ahuja's employment with the Debtors would terminate and he would resign as Chairman of the Board of Directors, (ii) the employment documents would be deemed rejected pursuant to Section 365 of the Bankruptcy Code, and (iii) in full and complete satisfaction of the executive claims, Mr. Ahuja would receive (a) the 750,000 dollars allowed unsecured nonpriority claim against LightSquared LP and (b) an allowed common equity interest in the amount of 8,832,354 shares of Existing Inc. Common Equity Interests. On July 6, 2012, the Debtors filed a motion with the Court seeking approval of the Settlement Agreement ("Settlement Agreement Motion"). No objections to the Settlement Agreement Motion were filed, and on July 17, 2012, following a hearing of the motion, the Court entered an order approving the Settlement Agreement (Docket No. 223).

By his objection to confirmation of the Plan and post-trial brief, Mr. Ahuja argues that the Plan cannot be confirmed because it is not fair and equitable to holders of existing Inc. Common Stock Equity Interests in that (i) it provides for claimants senior to Existing Inc. Common Stock Equity Interests to receive more than full compensation for their claims, which he intends is a violation of the absolute priority rule, and (ii) the Plan Proponents have failed to show that an exception to the absolute priority rule applies to the Plan.

Mr. Ahuja makes two arguments in support of his assertion that the Plan violates the absolute priority rule, both of which are premised on his conclusion that there is a substantial equity cushion in the Reorganized Debtors. In order to reach his conclusion that the enterprise value of the Debtors exceeds the sum of all outline outstanding claims, Mr. Ahuja begins with the premise that the going concern enterprise valuation of the Reorganized Debtors is 9.6 billion dollars and notes that, by simply subtracting the 4.3 billion dollars in claims from such valuation, value exists. Accordingly, argues Mr. Ahuja (i) the Plan is a per se valuation of the absolute priority rule under In re Bush Industries, Inc., 315 B.R. 292 (Bankr. W.D.N.Y. 2004) because it cancels the Existing Inc. Common Stock Equity Interests despite the enterprise value of the Debtors exceeding the sum of all outstanding claims against the estates, and (ii) the absolute priority rule is violated because each of the New Investors will receive the full value of their claims plus common stock in the Reorganized Debtors, which common stock has value based on the substantial equity cushion.

Mr. Ahuja next asserts that the Plan Proponents have failed to demonstrate that an exception to the absolute priority rule exists. Citing to the Debtors' confirmation brief, Mr. Ahuja concludes that the Plan Proponents were attempting to invoke the new value exception to the absolutely

priority rule and asserts that the new value exception, which Mr. Ahuja argues is "strongly disproved of in this Circuit", does not apply to the Plan because the Plan fails to establish that any of the New Investors are contributing new capital that is (1) new, (2) substantial, (3) money or money's worth, (4) necessary for a successful reorganization, and (5) reasonably equivalent to the property being received, which, if established, would permit them to invoke the new value exception to the absolutely priority rule in accordance with In re Bonner Mall Partnership, 2 F.3d 899 (9th Cir.1993) and Case v. Los Angeles Lumber Products, 308 U.S. 106 (1939).

With respect to Harbinger in particular, Mr. Ahuja argues that Harbinger's contribution of the Harbinger's Litigations cannot constitute new value because the Harbinger Litigations do not satisfy the "money or money's worth," "necessary for a successful reorganization" and "reasonably equivalent" prongs of the new value test. First, Mr. Ahuja argues that the Harbinger Litigations are not money or money's worth because the Plan Proponents do not contend that the Harbinger Litigations will provide actual litigation proceeds to Reorganized Debtors and no party has attempted to quantify the benefit of removing the cloud of uncertainty surrounding the Debtors. Building on the premise that the Harbinger Litigations are not money or money's worth, Mr. Ahuja next argues that the Harbinger Litigations are not necessary for a

successful reorganization because the cooperation -- because the contribution of the Harbinger Litigations are not in fact Harbinger providing fresh capital but rather merely "cooperation by old equity." Finally, Mr. Ahuja argues that the Harbinger Litigations do not meet the "reasonably equivalent" value prong because the Debtors put forth no evidence regarding the value of the Harbinger Litigations.

With respect to Fortress and Centerbridge, Mr. Ahuja argues the 89.5 million dollars that Fortress and Centerbridge will contribute in exchange for 34.3 percent of the common equity of the Reorganized Debtors is not reasonably equivalent value to the "enormous future value that Fortress and Centerbridge anticipate they will receive on its account." In support of this assertion, Mr. Ahuja points to the sizable equity cushion that he alleges the Reorganized Debtors will have and further argues that the Debtors have failed to meet their burden to prove that no other party was willing to contribute more for the common equity allocated to Fortress and Centerbridge.

Finally, with respect to SIG, Mr. Ahuja argues that SIG is providing no new value to the Reorganized Debtors and certainly not the reasonably equivalent value of the equity interests SIG is to receive pursuant to the Plan. Citing to In re Snyder, 105 B.R. 898 (Bankr.C.D.Ill. 1989), aff'd, 967 F.2d 1126 (7th Cir. 1992), Mr. Ahuja asserts that SIG's release of

collateral from its lien is not "money or money's worth" because a lien release creates no new funds and further argues that, even if a lien release is "money or money's worth," the Debtors have failed to show that it is reasonably equivalent to the equity interests SIG is receiving in return.

As noted above, Mr. Ahuja's objection to the Plan is entirely premised on the notion that the Reorganized Debtors will emerge with a substantial equity cushion while ignoring that any such equity cushion could not exist but for the many interrelated transactions that undergird the Plan. Mr. Ahuja presented no evidence in support of his assertion that a substantial equity cushion at Inc. exists. Rather, he relied on the valuation presented by the Debtors and specifically on the Debtors' Alternative Spectrum Use Approach valuation, which, as already discussed, provides for the combined enterprise valuation midpoint of the 9.6 billion dollars on which Mr. Ahuja relies.

While the Court has found the Alternative Spectrum Use Approach valuation presented by Mr. Hootnick to be compelling as to the value of the Debtors' spectrum assets, the Court cannot afford the Alternative Spectrum Use Approach all the weight necessary to conclude, with the requisite certainty, that the Reorganized Debtors will with certainty have an equity cushion sufficient to provide a recovery to any holder of Existing Inc. Common Equity Interests. First, the Alternative

Spectrum Use Approach involves a subset of the spectrum rights covered by the Debtors' License Modification Application and assumes that the FCC will grant the additional regulatory approval necessary to make use of that L-band spectrum on a "terrestrial-only" basis. See Debtors' Confirmation Brief at paragraph 42. As the Court made clear in its prior decision denying confirmation of the Debtors' Third Amended Joint Plan, uncertainty -- the uncertainty of FCC -- of the timing of FCC approvals is relevant to valuation. Moreover, as Mr. Smith confirmed in his testimony, the Debtors are currently pursuing the entirety of the License Modification Application and have no plans to seek FCC approval for terrestrial use solely of the subset of spectrum contained in the Alternative Spectrum Use Approach until the License Modification Application is no longer pending. With respect to the License Modification Application, again, the timing of FCC approval remains unknown. As counsel for the FCC stated on the record of March 17, 2015 hearing, and the statement in these Chapter 11 cases by the FCC on January 27, 2014 at Docket 1235, the FCC does not support any plan in these cases and has provided no indication regarding the timing with respect to the License Modification Application or any other matters involving LightSquared.

Accordingly, while Mr. Ahuja invites the Court to conclude that there is a substantial equity cushion based upon the Alternative Spectrum Use Approach, the regulatory

challenges attendant to the realization of the full 9.6 billion dollar valuation remains uncertain and precludes the definitive finding of the existence of the equity cushion that Mr. Ahuja has sought to establish.

Moreover, the Plan enables the Debtors to unlock significant value by combining the assets of the Inc. and the LP estates to operate as a going-concern enterprise with the support of the contributions of the New Investors. As counsel for the Debtors articulated so clearly during closing arguments, but for the contributions that are being made by the New Investors, the Debtors' creditors would not be paid anywhere in full. The fallacy of Mr. Ahuja's argument is that, without these considerations, there would be no value flowing to, let alone through, the Debtors' debt obligations to satisfy the claims of the creditors in full, creditors who are indisputably senior to Mr. Ahuja in the capital structure. For example, the Plan transaction with respect to SIG will take almost 400 million dollars of secured debt at LightSquared Inc. and convert it into equity at a Reorganized LightSquared Inc., relieving the Inc. estates of their secured obligations and a portion of their DIP financing. Without such a contribution, an equitization of debt in this matter would not othewise be possible. Mr. Hootnick, moreover, has testified that the NOLs have no value to the Debtors, and while their value in the hands of SIG is unclear, that's of no moment. Centerbridge and

Fortress are also contributing eighty-nine million dollars in the aggregate in new money investments in exchange for preferred interest in New LightSquared. With respect to Harbinger, who is also giving up its 227 million dollars in Prepetition Inc. Subordinated Claims in exchange for preferred interest in New LightSquared, Mr. Hootnick testified that the contribution by Harbinger of the Harbinger Litigations has enabled the Debtors to unlock significant value from New Investors which would otherwise have been unable to be realized by the joint estates, particularly with respect to Harbinger's pending action against the FCC. The equity cushion to which Mr. Ahuja points simply would not exist in the absence of each of the transactions with the New Investors, and because the accretion of debt on LightSquared's post-emergence capital structure will inevitably eat into this equity cushion until value can be realized, the amount of such equity cushion, if any, is incorrectly overstated by Mr. Ahuja.

Moreover, no holder of Existing Inc. Common Equity Interests will receive any recovery under the Plan on account of its common equity, including any former employees of LightSquared. The value of the assets of the Inc. Debtors standing alone -- without recourse to the assets of the LP Debtors and without combining the value of the Inc. and LP assets in one going-concern enterprise -- is insufficient to support a recovery for common equity holders. No stakeholder

senior to Mr. Ahuja in the LightSquared capital structure is being paid more than in full, nor is the absolute priority rule in any way violated by the Plan's distribution scheme. Each of the New Investors is senior to Mr. Ahuja in the capital structure and is in no way jumping ahead of common equity.

For all of these reasons, the Court finds that the Plan does not discriminate unfairly and is fair and equitable with respect to Class 14 (Existing Inc. Common Stock Equity Interests), and it overrules Mr. Ahuja's objection to confirmation.

Other Motions

Motions Related to Implementation of the Plan.

LightSquared has several pending motions for which it seeks approval in connection with implementation of the provisions of the Plan as modified. They are: (i) Motion for Order Authorizing Payment of Alternative Transaction Fee in Connection with Proposed Plan of Reorganization, dated December 31, 2014 (the "Alternative Transaction Fee Motion"), (ii) Motion for an Order, Pursuant to 11 U.S.C. Sections 105, 361, 362, 363, 364, and 507, (A) Approving Postpetition Financing, (B) Authorizing Use of Cash Collateral, if any, (C) Granting Liens and Providing Superpriority Administrative Expense Status, (D) Granting Adequate Protection, and (E) Modifying Automatic Stay, dated February 9, 2015 (the Inc. DIP Motion"), and (iii) Motion for an Order, Pursuant to 11 U.S.C. Sections

105(a) and 363, Authorizing LightSquared to (A) Enter Into and Perform Under Letters Related to 1.515 billion dollar Second Lien Exit Financing Arrangements, (B) Pay Fees and Expenses in Connection Therewith, and (C) Provide Related Indemnities, dated March 18, 2015 (the "Jefferies Motion").

Pursuant to the Alternative Transaction Fee Motion, LightSquared seeks approval of a 200 million dollar alternative transaction fee that is payable to the New Investors only on a subordinated basis and only in the event that LightSquared closes an alternative transaction through which all constituents (other than holders of Existing Inc. Common Stock Equity Interests) are (a) paid in full, in cash or (b) otherwise accept treatment in lieu of such cash, provided, however, that if the holder of a claim or equity interest is also a proponent of such transaction or funds, arranges, or otherwise supports a plan proposed by its affiliate for such a transaction, then such holder does not need to be offered to be paid in full, in cash, in order for the Alternative Transaction Fee to be triggered. In response to the now-withdrawn objections to the Alternative Transaction Fee Motion, the Debtors argued that, because the Alternative Transaction Fee is payable only under optimal circumstances for these estates, it is distinguishable from traditional, more onerous break-up fees which are payable upon the consummation of any alternative transaction, thus rendering the Alternative Transaction Fee far

more protective of stakeholders. The Debtors have established that the Alternative Transaction Fee is supported by the Debtors' sound business judgment; solidifies the support of the New Investors for LightSquared's restructuring; is a necessary condition of the Plan; and will not "chill" additional bidding on LightSquared's assets, given the size of the fee compared to the size of investment in LightSquared that would be necessary to trigger payment of the fee. Mr. Hootnick's testimony supported all of the foregoing. The Alternative Transaction Fee is approved and any remaining objections to the fee are overruled.

The Inc. DIP Motion seeks approval of a new post-confirmation credit facility (the "New Investor Inc. DIP Facility") that will only be necessary in the event that it is needed for a financing alternative to the DIP facility approved by the Court on January 20, 2015 (the "Eighth Replacement DIP Facility"), which contemplates post-confirmation financing for the Inc. estates in substantially the same amount as the New Investor Inc. DIP Facility. The stated purpose of the New Investor Inc. Facility, according to the Debtors, is to provide funding necessary to, among other things, implement the Plan, and the facility only comes into existence and LightSquared only has sought its approval in the event the Court confirms the Plan and the Eighth Replacement DIP Facility does not fund. By the declaration of Mark S. Hootnick filed in support of the

Inc. DIP Motion and on the record of the Confirmation Hearing, the Debtors have adequately demonstrated their exercise of sound business judgment in seeking approval of the New Investor Inc. DIP Facility in order to create extra assurance that they will have sufficient liquidity to consummate the Plan and to fund the Inc. Debtors through the Effective Date. The Court will grant the Inc. DIP Motion.

As announced on the record of the hearing held on March 17, 2015, the Debtors have obtained a fully underwritten commitment in connection with the Second Lien Exit Facility in the amount of 1.515 billion dollars, the aggregate principal amount necessary to satisfy SPSO's claims in full assuming a December 17, 2015 effective date. By the Jefferies Motion, the Debtors seek entry of an order authorizing LightSquared to (a) enter into and perform under (i) a commitment letter with Jefferies Finance LLC for 1.515 billion dollar commitment and (ii) a fee letter with Jefferies, (b) pay certain fees and expenses associated with the commitment letter and the fee letter, and (c) provide related indemnities. Concurrent with the filing of the Jefferies Motion, the Debtors filed a motion seeking authority to file the fee letter under seal and a motion seeking to shorten the period of the time prior to the hearing on the Jefferies Motion. On the record of the March 18th hearing, the Court granted the motion to shorten time and scheduled the hearing on the Jefferies Motion for March 26,

2015, the time of closing arguments on confirmation. No objections were filed to the Jefferies Motion. At closing argument, counsel for the Debtors proffered the testimony of Mark Hootnick of Moelis in support of the Jefferies Motion.

The Debtors have demonstrated that had entry into and performance under the commitment letter and fee letter are in the best interests of the estate and are based upon the sound business judgment of the Debtors and the Special Committee in that (i) the decision to enter into the 1.515 billion dollar commitment was made an on informed basis after determining that such commitment paves the way for an exit from bankruptcy that maximizing value for the Debtors' stakeholders, and (ii) the commitment letter and fee letter were negotiated at arm's length and in good faith. Notably, certain of the fee terms were favorably negotiated by the Debtors; for example, the commitment fee of approximately eleven million dollars owed to Jefferies will not be paid in cash but rather will be paid in kind for the issuance of Second Lien Term Loans and is payable only if the Plan goes effective and the Debtors draw on the commitment. The Court will grant the Jefferies Motion and the related motion to file the fee letter under seal.

Finally, the Motion to Authorize LightSquared to Modify and Extend the Existing Key Employee Incentive Plan

On October 3, 2012, the Court entered an order approving the Debtors' Key Employee Incentive Plan or the

"Existing KEIP" [Docket No. 394]. Pursuant to the Existing KEIP approved by the Court, the Debtors are authorized to offer cash bonus incentives to four key employees: Douglas Smith, Marc Montager, Curtis Lu, and Jeffrey Carlisle (collectively, the "Key Employees") in connection with the following incentive objections:

The Cash Preservation Objective: The Key Employees have the opportunity to earn cash bonuses based on achieving savings related to the Debtors' total operating expenses spending as a percent of the Debtors' consolidated budget. This objective required two measurement dates and each Key Employee had the opportunity to earn in the aggregate up to 125 percent of his annual salary.

The Regulatory Objectives: The Key Employees had the opportunity to earn cash bonuses totaling up to 200 percent of their annual salaries based upon the achievement of three regulatory objectives. Twenty percent of the cash bonuses will be paid upon the satisfaction of each of the first and second regulatory objectives and sixty percent of the cash bonuses would be paid on account of the satisfaction of the third regulatory objective. The Debtors paid the Key Employees 1.76 billion dollars on account of satisfying both the first and second regulatory objectives. The Key Employees did not satisfy the third regulatory objective prior to its December 31, 2013 deadline.

The emergence objective:

The Key Employees had the opportunity to earn cash bonuses totaling up to 200 percent of their annual salaries upon the confirmation of Chapter 11 plan, or Court approval of a sale of substantially all of Debtors' assets based upon a timing-sensitive sliding scale. The Key Employees did not achieve this objective prior to its December 31, 2013 deadline.

On February 9, 2015, the Debtors filed a motion seeking to modify and extend the Existing KEIP [Docket No. 2065] (the "KEIP Motion"). The modified KEIP proposed on February 9th provided for cash bonuses for the Key Employees upon the achievement of each of the following objectives:

Confirmation Objective: The Debtors proposed to award the Key Employees a cash bonus forty percent of each Key Employee's annual salary that would be (a) earned upon the entry of an order confirming the Plan and (b) paid upon the earlier of (i) the "Inc. Facilities Claims Purchase Date Closing" under the Plan and (ii) thirty days after the entry of such confirmation order (provided that there is no stay of such confirmation order in effect at such time).

The Effective Date Objective: The Debtors propose to award the Key Employees a cash bonus of forty percent of their annual salary that would be (a) earned upon the FCC's approval of a change of control, as set for under and pursuant to the Plan and (b) paid within thirty days of the effective date of

the Plan.

The Cash Preservation Objective: The Debtors' proposed cash preservation objective was similar to the cash preservation objective of the Existing KEIP but proposed to award cash bonuses based upon a modified sliding scale.

On February, 25, 2015, SPSO filed an objection to the February 9 KEIP [Docket No. 2154]. SPSO objected specifically to the Confirmation Objective and the Effective Date Objective, arguing that (a) such features of the Modified KEIP are disguised retention plans that do not meet the standards of Section 503(c)(1) of the Bankruptcy Code and (b) that, even if the Confirmation Objective and the Effective Date Objective are true incentive plans properly analyzed under Sections 360(b) and 503(c)(1) of the Bankruptcy Code, the Debtors made no showing that the Confirmation Objective and the Effective Date Objective are a proper exercise of the Debtors' business judgment.

On March 5th, the Debtors filed a supplement to the February 9th KEIP and a reply to SPSO's objection [Docket No. 2181]. Following consultation with the United States Trustee, the Debtors agreed to amend the February 9th KEIP (as amended, the "Modified KEIP") to reduce the cash bonuses payable to the Key Employees upon achievement of Confirmation Objective from forty percent of annual salary to thirty percent of annual salary and to increase the cash bonuses payable through

achievement of the Cash Preservation Objective.

Notwithstanding these changes -- and the fact that SPSO is now being paid in full in cash on the Plan Effective Date -- SPSO's objections to the February 9th KEIP, and specifically to the Confirmation Objective and the effective date objective, remain outstanding. Other than pure schadenfreude, the reason for SPSO's stance on the Modified KEIP is difficult to understand.

In determining whether Section 503(c)(1) applies to a proposed compensation plan, courts have looked to whether the proposed compensation plan is incentivizing or retentive in nature. See e.g., In re Hawker Beechcraft, Inc., 479 B.R. 308, 312 (Bankr. S.D.N.Y. 2012)("the threshold question...is whether the KEIP is a true incentive plan or a disguised retention plan"); In re: Velo Holdings, 472 B.R. 201 at 209 (Bankr. S.D.N.Y. 2012)("Sections 503(c)(1) limits payments to insiders for the purpose of retention and applies to those employee retention provisions that are essentially pay-to-stay key employee retention programs.") Courts recognize that, while a proposed compensation plan "may contain some retentive effect, that 'does not mean that the plan, overall, is retentive rather than incentivizing in nature.'" In re Velo Holdings, 472 B.R. at 210 (quoting In re Dana Corporation, 358 B.R. 567 at 571 (Bankr. S.D.N.Y. 2001); see also In re Global Home Products, LLC, 369 B.R. 778 at 785 (Bankr.D. Del. 2007)("The entire

analysis changes if a bonus plan is not primarily motivated to retain personnel or is not in nature of severance.")

By their terms, the Confirmation Objective and Effective Date Objective are incentivized and not retentive in nature because each of the Confirmation Objective and the Effective Date Objective can be achieved only if the Key Employees do more than simply remain employees of the Debtors. First, to achieve either objective, the Debtors must confirm a plan, a task that, as these cases have shown, could not be achieved without significant efforts beyond the scope of the Key Employees' general duties as employees of the Debtors, including responding to changes in the circumstances of these cases, negotiating with perspective exist facility lenders, preparing for a confirmation hearing, and a host of other duties beyond an ordinary course of management of the Debtors' business and assets. Second, to achieve the Effective Date Objective, the Key Employees must obtain the FCC's approval for a change of control. The FCC does not simply rubber stamp change of control applications. To obtain FCC approval, the Key Employees will need to actively supervisor and manage the filing and pendency of the application, including responding to any changes in the regulatory environment or request by the FCC; simply filling out the forms and putting them in the mail is unlikely to be sufficient. Similarly, the Cash Preservation Objective, to which SPSO has not objected, is incentivizing in

nature in that the Key Employees will be paid if they reduce operating expenses relative to the Debtors' budget and thereby increase the value of the Debtors' estates. Accordingly, the Modified KEIP is incentivizing in nature and does not need to be analyzed under Section 503(c)(1).

As Section 503(c)(1) is inapplicable, and there are no severance payments contemplated by the Modified KEIP that would implicate Section 503(c)(2), the Modified KEIP will be analyzed under Section 503(c)(3). "If Sections 503(c)(1) and (c)(2) are not operative, a court may consider whether the payments are permissible under Section 503(c)(3)..." In re Dana Corporation, 358 B.R. at 576. Courts have held that Section 503(c)(3) creates a standard for incentivizing payments outside the ordinary course of a Debtors' business, no different than the business judgments under 363(b). See In re Velo Holdings, In re Dana Corporation.

In applying the business judgment standard in the context of a compensation plan, courts have considered the following factors:

Is there a reasonable relationship between the plan proposed and the results to be obtained -- that is -- will the key employees stay for as long as it takes for the debtor to reorganize or market assets or, in the case of a performance incentive, is a plan calculated to achieve the desired performance?

Is the cost of the plan reasonable in the context of the debtor's assets, liabilities and earning potential?

Is the scope of the plan fair and reasonable?

Is the plan or proposal consistent with industry standards?

What were the due diligence efforts of the debtors in investigating the need for a plan; analyzing which key employees need to be incentivized.

Did the debtor receive independent counsel in performing due diligence and in creating and authorizing the inventive compensation?

See In re Dana Corporation, 358 B.R. at 567-77. The Modified KEIP satisfies each of these factors. First, there is more than a reasonable relationship between the Modified KEIP and the desired performance. The Debtors' business plan and goals are, principally, to achieve confirmation of a plan, to preserve as much cash as possible, and to meet the conditions necessary to implement a confirmed Chapter 11 plan. The Modified KEIP provides for incentive payments directly tied to each of these goals and nothing more. Additionally, the Key Employees' general knowledge of the wireless industry and regulatory environment, as well as their specific knowledge of the Debtors' business and assets and business relationships will be highly instrumental in achieving the objectives of the Debtors. As Mr. Hootnick testified, this particular management

is "the only group that can get what needs to be done completed." (3/11/15 Tr. at page 22, lines 12 to 19.) Second, the cost of the Modified KEIP is reasonable. The total potential cash payout achievable under the Modified KEIP, approximately 2.86 million dollars, is less than the total cash payout that was achievable under the Existing KEIP previously approved by the Court and, significantly, the United States Trustee is of the view that the cost of the Modified KEIP is not unreasonable considering the facts and circumstances of these Chapter 11 cases. Third, the Modified KEIP does not discriminate among the Key Employees, and the Modified KEIP has been tailored to include only those employees that lead an area critical to the Debtors' reorganization efforts. Fourth, the Court is satisfied that the Modified KEIP is consistent with industry standards and KEIPs approved by courts in this district and elsewhere and that the Debtors and the Special Committee engaged in appropriate diligence and received appropriate counsel in formulating the Modified KEIP. Accordingly, the Court finds that the Modified KEIP is a sound exercise of the Debtors' business judgment under Sections 503(c)(3)and 363(b). SPSO's objection is overruled. The KEIP Motion is granted with respect to the Modified KEIP.

Finally, it is worth noting that throughout the incredibly turbulent three years of these Chapter 11 cases, members of the LightSquared management team have spent

countless hours in this courthouse and dozens of hours on the witness stand. They have been steady and steadfast in their pursuit of LightSquared's business and restructuring objectives, notwithstanding being buffeted in various directions by the various stakeholders, all of who owe them a tremendous -- and in this Court view -- a nondischargeable debt of gratitude.

MR. BARR: Thank you very much, Your Honor, and appreciate, obviously, the kind words for management. We wholeheartedly --

THE COURT: You all owe Judge Gonzales a debt of gratitude, because I right now am missing his class that I'm supposed to be teaching.

MR. BARR: I'm sorry about that, but thank you for staying.

THE COURT: I am, too.

MR. BARR: Your Honor, just a few housekeeping before --

THE COURT: Right.

MR. BARR: -- we wrap up. So --

THE COURT: Did we -- you didn't finish going through the confirmation order?

MR. BARR: I did not.

THE COURT: Okay. We have never, I think, formally -- just give me a moment.